



L. JOYCE HAMBERS
COMMISSIONER

The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204

October 28, 1982

("Company") operates a chain of department stores, five of which are located in Massachusetts and one in New Hampshire.

(1) You inquire whether the sales or use tax applies to the Company's purchase of tangible personal property from a Massachusetts vendor for exclusive use in its New Hampshire store. The vendor is required to deliver the property to the Company in New Hampshire, or to a common carrier for delivery to the Company in New Hampshire.

General Laws Chapter 64H, Section 6(b) exempts from the sales and use taxes "s/ales of tangible personal property... which the vendor is obligated under the terms of any agreement to deliver...to a purchaser outside the commonwealth or...to an interstate carrier for delivery to a purchaser outside the commonwealth."

Based on the foregoing, it is ruled that neither sales nor use tax applies to the sale of tangible personal property to the Company for exclusive use in New Hampshire, by a vendor who is obligated to deliver the property to the Company in New Hampshire or to a common carrier for delivery to the Company in New Hampshire.

October 28, 1982

(2) You inquire whether the sales or use tax applies to the Company's purchase of a television commercial on videotape. Upon purchasing the commercial, the Company will transfer it to a television station for broadcasting.

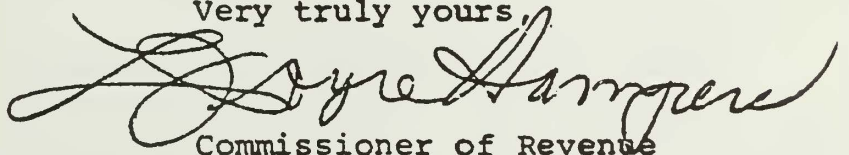
Subdivision 2(c) of Sales and Use Tax Regulation 830 CMR 64H.05 ("Advertising Agencies") explains the application of the sales and use tax laws to television commercials.

It provides:

"Broadcast and telecast commercials. When a producer or studio sells a commercial to an advertising agency, or an agency, not acting as true agent, transfers a commercial to its client, and the commercial is embodied in a tangible form, such as film or videotape, the real object of the transaction is a transfer of tangible personal property, and a tax applies to the total amount paid by the purchaser for the commercial, unless the sale is for resale in the regular course of business or for an exempt use. There is no allowance for musicians' fees, other talent fees, or for any other expenditure essential to the production of the finished commercial."

Based on the foregoing, it is ruled that the Company's purchase of a television commercial on videotape is subject to the sales or use tax; the sales price of the commercial on which the tax is based is the entire amount paid therefor.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Joyce Harpers", written in dark ink.

Commissioner of Revenue

LJH:JXD:mf

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